



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB2202

Introduced 2/8/2023, by Rep. Jay Hoffman

#### SYNOPSIS AS INTRODUCED:

New Act

30 ILCS 105/5.990 new

30 ILCS 105/5.991 new

Creates the Underground Carbon Dioxide Storage Act. Provides that the Act applies to the underground storage of carbon dioxide but does not apply to extractable mineral resources, and the rights and requirements of the Act are subordinate to the rights pertaining to oil, gas, and coal resources. Provides that a storage operator may not operate a storage facility without a storage facility permit issued by the Department of Natural Resources. Includes provisions regarding: pore space ownership; integration of ownership interests; fees; requirements for drilling near a storage facility; the applicability of certain tort claims; certificate of project completion; and rulemaking. Creates the Carbon Dioxide Storage Administrative Fund and the Carbon Dioxide Long-Term Trust Fund. Makes corresponding changes in the State Finance Act. Effective immediately.

LRB103 26411 AMQ 52774 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Underground Carbon Dioxide Storage Act.

6 Section 5. Statement of policy. The General Assembly finds  
7 that it is in the public interest to promote the permanent  
8 underground storage of carbon dioxide. Underground storage of  
9 carbon dioxide benefits the citizens of this State by reducing  
10 greenhouse gas emissions and by supporting jobs and economic  
11 development in local communities. Therefore, it is the policy  
12 of this State to promote the use and employment of  
13 technologies that enable the capture of carbon dioxide for the  
14 purpose of storing the carbon dioxide underground in a  
15 permanent manner.

16 Section 10. Applicability.

17 (a) This Act applies to the underground storage of carbon  
18 dioxide.

19 (b) Except as otherwise provided in this Act, this Act  
20 does not apply to extractable mineral resources.

21 (c) The rights and requirements of this Act:

22 (1) are subordinate to the rights pertaining to oil,

1 gas, and coal resources; and

2 (2) may not adversely affect oil, gas, and coal  
3 resources, except as is strictly necessary to construct  
4 and maintain a storage facility that will provide for  
5 permanent storage of carbon dioxide.

6 Section 15. Definitions. As used in this Act:

7 "Carbon dioxide" means the chemical compound composed of  
8 one carbon and 2 oxygen atoms and includes phases, mixtures,  
9 and combinations of carbon dioxide, whether fluid, liquid or  
10 gaseous, stripped, segregated, or divided from any other fluid  
11 stream thereof, plus incidental associated substances derived  
12 from the source materials and the capture process, and any  
13 substances added to the stream to enable or improve the  
14 injection process.

15 "Carbon dioxide injection well" refers to a well that is  
16 used to inject carbon dioxide into a storage facility pursuant  
17 to a UIC Class VI well permit.

18 "Carbon dioxide plume" means the underground,  
19 3-dimensional extent of an injected carbon dioxide stream.

20 "Department" means the Department of Natural Resources.

21 "Mineral lessee" means a lessee, identified by the records  
22 of the recorder of deeds for each county containing a portion  
23 of the proposed storage facility, who holds an interest in  
24 minerals on real property that are located above, below, or  
25 within the proposed storage facility that has been severed

1 from the surface estate by grant, exception, reservation,  
2 lease, or any other means.

3 "Mineral owner" means an owner identified by the records  
4 of the recorder of deeds for each county containing a portion  
5 of the proposed storage facility who holds an interest in  
6 minerals on real property that are located above, below, or  
7 within the proposed storage facility that has been severed  
8 from the surface estate by grant, exception, reservation,  
9 lease, or any other means.

10 "Pore space" means subsurface cavities or voids that can  
11 be used as a storage space for carbon dioxide.

12 "Pore space owner" means a person, a trust, a corporation,  
13 or another entity that has title to, a right to, or an interest  
14 in pore space.

15 "Proposed storage facility" means a subsurface sedimentary  
16 stratum, formation, aquifer, cavity, or void that is naturally  
17 or artificially created for the use of, or is capable of being  
18 made suitable for, injecting and storing carbon dioxide and  
19 which a storage operator proposes to develop as a storage  
20 facility for the underground storage of carbon dioxide.

21 "Storage facility" means the subsurface area consisting of  
22 the extent of a carbon dioxide plume which is required to be  
23 delineated in an approved UIC Class VI well permit or an  
24 amendment to a UIC Class VI well permit of a storage operator.

25 "Storage operator" means a person, a trust, a corporation,  
26 or another entity that operates a storage facility.

1 "Surface or subsurface property interest owner" means a  
2 property interest owner identified by the records of the  
3 recorder of deeds for each county containing a portion of the  
4 proposed storage facility who holds a fee simple interest,  
5 other freehold interest, or leasehold in the surface or  
6 subsurface of the property, which may include mineral rights.

7 "UIC Class VI well permit" means a permit issued under the  
8 Underground Injection Control program of the federal Safe  
9 Drinking Water Act that allows a person, a trust, a  
10 corporation, or another entity to operate a carbon dioxide  
11 injection well.

12 "Underground storage of carbon dioxide" means the  
13 injection and permanent storage of carbon dioxide into  
14 underground strata and formations pursuant to at least one UIC  
15 Class VI well permit.

16 Section 20. Pore space ownership.

17 (a) Unless expressly modified, reserved, or altered by a  
18 deed, conveyance, lease, or contract, the ownership of the  
19 pore space underlying a surface estate is declared to be  
20 vested in and owned by the owner or owners of the surface  
21 estates above the pore space.

22 (b) This Act does not alter, amend, diminish, or  
23 invalidate common law established prior to the effective date  
24 of this Act regarding the relationship between the mineral  
25 estate and the surface estate.

1 (c) A grant of (i) an easement to use or (ii) a lease of  
2 pore space for underground storage of carbon dioxide is in  
3 perpetuity if specified by an easement or lease. Unless an  
4 individual who obtains an easement or lease operates carbon  
5 dioxide injection not later than 20 years after obtaining the  
6 easement or lease, interest shall lapse, extinguish, and  
7 revert to the owner of the surface estate.

8 Section 25. Integration of ownership interests.

9 (a) If at least 2 pore space owners own pore space located  
10 within a proposed carbon dioxide storage area of a storage  
11 facility, the owners may agree to integrate the owners'  
12 interests to develop the pore space as a proposed storage  
13 facility for the underground storage of carbon dioxide.

14 (b) If all of the owners of the pore space under subsection  
15 (a) do not agree to integrate the owners' interests, the  
16 Department may issue an order requiring the owners to  
17 integrate the owners' interests and to develop the pore space  
18 as a proposed storage facility for the underground storage of  
19 carbon dioxide to serve the public interest subject to the  
20 findings under subsection (c).

21 (c) Before issuing an order under subsection (b), the  
22 Department must make the following findings:

23 (1) that the storage operator has undertaken specific  
24 efforts to obtain a UIC Class VI well permit and is  
25 reasonably likely to obtain such a permit;

1           (2) that the storage operator has made a good faith  
2 effort to obtain the consent of all pore space owners  
3 located within the proposed storage facility;

4           (3) that the storage operator has obtained the consent  
5 of the owners of the pore space underlying at least 61% of  
6 the surface area above the proposed storage facility or  
7 amended proposed storage facility; and

8           (4) that all pore space owners who do not agree to  
9 integrate the owners' interests to develop the pore space  
10 as a proposed storage facility for the underground storage  
11 of carbon dioxide are or will be equitably compensated.

12           (d) Any unknown or missing pore space owner shall be  
13 deemed to have consented to integrate the owner's interest if  
14 the proposed storage operator complied with the notice  
15 requirements in paragraph (3) of subsection (b) of Section 30.  
16 Any unknown or missing pore space owner shall be deemed  
17 eligible for equitable compensation pursuant to paragraph (4)  
18 of subsection (c).

19           (e) A right to pore space granted by this Section does not  
20 confer a right to enter upon, or otherwise use, the surface of  
21 the land that is integrated under this Section unless provided  
22 in an order requiring the owners to integrate the owners'  
23 interests and to develop the pore space as a proposed storage  
24 facility for the underground storage of carbon dioxide.

25           Section 30. Injection permits.

1 (a) Injection permits have the following requirements:

2 (1) A storage operator may not operate a storage  
3 facility in this State without:

4 (A) a UIC Class VI well permit; and

5 (B) a valid permit issued by the Department.

6 (2) If a storage facility is owned by an entity other  
7 than the storage operator, the storage operator shall be  
8 responsible for obtaining a permit for a storage facility  
9 under paragraph (1). A permit for a storage facility may  
10 be transferred or assigned from one storage operator to  
11 another storage operator.

12 (3) An entity shall apply to the Department for a  
13 permit for a storage facility in a form and manner  
14 prescribed by the Department.

15 (4) An application under paragraph (3) must include  
16 the following:

17 (A) a filing fee of \$1,000;

18 (B) the signature of the applicant;

19 (C) a statement verifying that the information  
20 submitted is true, accurate, and complete to the best  
21 of the applicant's knowledge;

22 (D) a statement that the interests of a mineral  
23 lessee or mineral owner will not be adversely  
24 affected. If a mineral owner or mineral lessee is  
25 adversely affected, the adversely affected mineral  
26 owner or mineral lessee and the applicant may enter

1 into an agreement under Section 25;

2 (E) documentation describing the scope of the  
3 proposed project and copies of any relevant federal  
4 permits, including UIC Class VI well permits, once  
5 obtained; and

6 (F) an estimate of the amount of carbon dioxide to  
7 be injected into a storage facility.

8 (b) Injection permit applications have the following  
9 procedural requirements:

10 (1) The Department shall review an application  
11 submitted under subsection (a). If the Department  
12 determines that the application is complete, the  
13 Department shall notify the applicant. If the Department  
14 determines that the application is incomplete, inaccurate,  
15 or both, the Department shall return the application to  
16 the applicant.

17 (2) If the Department returns an application to an  
18 applicant under paragraph (1), the Department shall inform  
19 the applicant in writing that the applicant may file a  
20 corrected application not more than 60 days after the  
21 receipt of the returned application. Upon receiving a  
22 corrected application, the Department shall review the  
23 application. If the Department determines that the  
24 corrected application is complete, the Department shall  
25 notify the applicant.

26 (3) Upon receiving notification that the application

1 or corrected application is complete, the applicant shall:

2 (A) not more than 60 days after receiving the  
3 notice that the application or corrected application  
4 is complete:

5 (i) place a copy of the application in a  
6 public library located in each county in which the  
7 storage facility is proposed to be located for  
8 public inspection;

9 (ii) publish notice under the Notice By  
10 Publication Act in each county in which the  
11 storage facility is proposed to be located and the  
12 name and address of each library in which a copy of  
13 the application is placed as required by item (1);  
14 and

15 (iii) provide mailed notice to each known and  
16 locatable surface estate, mineral estate, and pore  
17 space owner within or adjacent to the storage  
18 facility; and

19 (B) not more than 30 days after the publication or  
20 delivery of the notice under subparagraph (A), provide  
21 to the Department proof of publication of notice.

22 (4) Not later than 90 days after receiving proof of  
23 publication of notice under subparagraph (B) of paragraph  
24 (3), the Department shall notify the applicant in writing  
25 that the Department has either approved or denied the  
26 application.

1           (c) If the Department approves an application under this  
2 Section, the Department shall issue to the applicant a storage  
3 facility permit.

4           (d)(1) If a storage operator identifies information as  
5 trade secret or confidential and proprietary information in  
6 its permit application, the Department shall take all  
7 necessary precautions to avoid public disclosure of that  
8 information.

9           (2) If any entity other than the storage operator files  
10 with the Department a request for release of the confidential  
11 information identified in paragraph (1) including a statement  
12 of the reasons that the information should be disclosed, the  
13 Department shall consult with the storage operator. The  
14 Department may only release information identified in  
15 paragraph (1) if the storage operator consents.

16           Section 35. Fees.

17           (a) At the conclusion of each calendar year, the storage  
18 operator shall pay the Department a fee of \$0.06 for every ton  
19 of carbon dioxide injected into a storage facility in that  
20 year, deposited into the Carbon Dioxide Storage Administrative  
21 Fund.

22           (b) Upon approval by the Department of an application for  
23 certificate of completion, the storage operator shall pay an  
24 additional one-time transfer fee of \$0.02 per ton of carbon  
25 dioxide injected and stored at the storage facility over the

1 permit period, deposited into the Carbon Dioxide Storage  
2 Long-Term Trust Fund.

3 Section 40. Funds.

4 (a) There is hereby created the Carbon Dioxide Storage  
5 Administrative Fund to be held as a separate fund within the  
6 State treasury and to be administered by the Department.  
7 Moneys in the fund shall be expended only as authorized by this  
8 Act.

9 (1) The fee collected in subsection (a) of Section 35  
10 shall be deposited into the Carbon Dioxide Storage  
11 Administrative Fund.

12 (2) Moneys in the Carbon Dioxide Storage  
13 Administrative Fund may only be used:

14 (A) to defray expenses incurred by the Department  
15 for the regulation of storage facilities during their  
16 construction, operational, and pre-closure phases; or

17 (B) if the Carbon Dioxide Long-Term Trust Fund  
18 becomes depleted, to defray expenses incurred by the  
19 Department for the long-term monitoring and management  
20 of storage facilities after the department issues a  
21 certificate of project completion.

22 (b) There is hereby created the Carbon Dioxide Storage  
23 Long-Term Trust Fund to be held as a separate fund within the  
24 State treasury and to be administered by the Department.  
25 Moneys in the fund shall be expended only as authorized by this

1 Act.

2 (1) The fee collected in subsection (b) of Section 35  
3 shall be deposited into the Carbon Dioxide Long-Term Trust  
4 Fund.

5 (2) Moneys in the Carbon Dioxide Long-Term Trust Fund  
6 may only be used to defray expenses incurred by the  
7 Department for the long-term monitoring and management of  
8 storage facilities after the Department issues a  
9 certification of project completion.

10 Section 45. Requirements for drilling near a storage  
11 facility.

12 (a) A mineral owner or mineral lessee shall provide  
13 written notice to a storage operator at least 31 days prior to  
14 drilling a well if the mineral owner or mineral lessee wishes  
15 to drill a well not more than:

16 (1) 330 feet from the surface location of a well  
17 pursuant to a UIC Class VI well permit; or

18 (2) 500 feet from the uppermost confining zone of a  
19 storage facility pursuant to a UIC Class VI well permit.

20 (b) A well drilled under subsection (a) must be drilled in  
21 compliance with the requirements of:

22 (1) the Department to preserve the integrity of the  
23 storage facility;

24 (2) a UIC Class VI well permit; and

25 (3) any other applicable rules or regulations.

1 Section 50. Applicability of certain tort claims.

2 (a) A claim of subsurface trespass shall not be actionable  
3 against a storage operator conducting underground storage of  
4 carbon dioxide in accordance with a valid UIC Class VI well  
5 permit unless the claimant proves that injection or migration  
6 of carbon dioxide (i) constitutes an invasion of another's  
7 interest in the use and enjoyment of his or her land that is  
8 substantial, either intentional or negligent, unreasonable,  
9 and perceptible to the senses, or (ii) has caused direct  
10 physical injury to a person, an animal, or tangible property.

11 (b) A surface or subsurface property interest holder shall  
12 be permitted to recover money damages only for the loss of a  
13 nonspeculative value resulting from the injection and  
14 migration of carbon dioxide beyond the storage facility.

15 (c) A surface or subsurface property interest holder may  
16 seek punitive damages in accordance with Section 2-604.1 of  
17 the Code of Civil Procedure only if the storage operator  
18 knowingly or willfully violates the requirements of a UIC  
19 Class VI well permit or acts with reckless disregard for  
20 public safety.

21 Section 55. Certificate of project completion.

22 (a) Upon application from a storage operator, the  
23 Department shall consider whether each of the following  
24 factors is satisfied in determining whether to issue a

1 certificate of project completion. The Department may only  
2 issue the certificate if the Department finds that the storage  
3 operator:

4 (1) is in compliance with all applicable laws  
5 governing the storage facility;

6 (2) shows that the storage facility is reasonably  
7 expected to retain the carbon dioxide stored therein;

8 (3) shows that the carbon dioxide in the storage  
9 facility is stable by showing either that:

10 (A) the stored carbon dioxide is essentially  
11 stationary; or

12 (B) if the stored carbon dioxide migrates,  
13 migration will be likely to remain within the storage  
14 facility;

15 (4) shows that any long-term monitoring wells,  
16 equipment, and facilities used after the closure period  
17 are in good condition and retain mechanical integrity;

18 (5) shows that injection wells have been plugged;

19 (6) shows that equipment and facilities, not including  
20 fixed structures and long-term monitoring equipment and  
21 wells, have been removed; and

22 (7) shows the following with respect to site closure:

23 (A) the storage operator has provided a notice of  
24 intent for site closure to the United States  
25 Environmental Protection Agency, or to the State  
26 regulatory body if the State assumes primacy for UIC

1 Class VI well permitting;

2 (B) site closure has been authorized by the United  
3 States Environmental Protection Agency, or by the  
4 State regulatory body if the State assumes primacy for  
5 UIC Class VI well permitting; and

6 (C) the storage operator has provided to the  
7 United States Environmental Protection Agency the site  
8 closure report required under 40 CFR 146.93(f) on the  
9 effective date of this Act, or has provided a  
10 comparable report to the State regulatory body if the  
11 State assumes primacy for UIC Class VI well  
12 permitting.

13 (b) Not later than 90 days after receiving an application  
14 from the storage operator, the Department shall either:

15 (1) issue a certificate of project completion; or

16 (2) if the Department determines that the application  
17 for a certificate of project completion is incomplete,  
18 inaccurate, or both, return the application to the storage  
19 operator.

20 (c) If the Department returns the application to the  
21 storage operator under subsection (b), the Department shall  
22 inform the storage operator, in writing, of the deficiencies  
23 of the submitted application and inform the storage operator  
24 of the right to file a corrected application with the  
25 Department.

26 (d) Upon issuance of a certificate of project completion

1 and payment of the fee under subsection (b) of Section 35, the  
2 following occurs:

3 (1) Title to the storage facility and all carbon  
4 dioxide stored therein is immediately transferred to the  
5 State. Title acquired by the State under this subsection  
6 includes all rights, and interests in, and all  
7 responsibilities associated with, the stored carbon  
8 dioxide and the storage facility. Notwithstanding the  
9 foregoing, no party may transfer to the State, and the  
10 State may not accept, any property interests or rights  
11 that the party does not own or have legal authority to  
12 transfer.

13 (2) The State assumes responsibility for all  
14 regulatory requirements associated with the storage  
15 facility and stored carbon dioxide, and the storage  
16 operator and the owner of the storage facility are  
17 released from responsibility for all regulatory  
18 requirements associated with the storage facility and  
19 stored carbon dioxide.

20 (3) The State assumes any potential liability  
21 associated with the storage facility and stored carbon  
22 dioxide.

23 (e) A certificate of project completion shall be void if  
24 the Department finds, after a hearing, that the storage  
25 operator obtained the certificate on the basis of gross  
26 misconduct, including intentional misrepresentation of

1 information to the Department that the Department relied upon,  
2 gross negligence, willful deceit, or criminal wrongdoing. A  
3 storage operator may appeal this finding in a court of  
4 competent jurisdiction.

5 (f) Unless there is documentation to the contrary, the  
6 storage operator holds title to the carbon dioxide injected  
7 into and stored in a storage facility until and unless the  
8 storage operator:

9 (1) obtains a certificate of project completion from  
10 the Department; or

11 (2) expressly conveys title to a third party.

12 Section 60. Rules. The Department shall adopt rules to  
13 implement this Act within 180 days after the effective date of  
14 this Act.

15 Section 65. The State Finance Act is amended by adding  
16 Section 5.990 and 5.991 as follows:

17 (30 ILCS 105/5.990 new)

18 Sec. 5.990. The Carbon Dioxide Storage Administrative  
19 Fund.

20 (30 ILCS 105/5.991 new)

21 Sec. 5.991. The Carbon Dioxide Long-Term Trust Fund.

1           Section 97. Severability. The provisions of this Act are  
2 severable under Section 1.31 of the Statute on Statutes.

3           Section 99. Effective date. This Act takes effect upon  
4 becoming law.